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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED

OCTOBER TERM, 1884.

No. 140.

KATE J. BAYLIS BY HER GUARDIAN AD LITEM ROBERT R. RHODES, PLAIFTIFF IN ERROR,

vs.

THE TRAVELERS INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

PHILADELPHIA BAR ASSOCIATION

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 25, 1881.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Bill of Exceptions.*

United States Circuit Court, Eastern District of New York.

KATE JOSEPHINE BAYLIS, by Robert R. Rhodes, Her Guardian *ad litem*,
against
THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD, CONN.

This action was commenced on the 27th day of August, 1873, in the city court of Brooklyn, N. Y., by the service of summons and complaint.

The defendant appeared and answered the complaint, and then the cause was removed into the circuit court of the United States, eastern district of New York.

The issues came on for trial at a term of the circuit held by his honor, Judge Benedict, on the 9th day of October, 1874.

A jury was impanelled and sworn, and the cause was
2 regularly tried before the court and the jury. A verdict was rendered for the plaintiff under the circumstances hereinafter stated. After argument of law questions on the 5th of January, 1877, the court ordered judgment for the defendant, dismissing the plaintiff's complaint with costs.

Judgment was entered on this decision on the 13th day of March, 1877.

The pleadings, &c., appear by the judgment roll.

On the trial the plaintiff proved the death of William P. Baylis on the 20th day of November, 1872, and the due appointment of Robert R. Rhodes as the plaintiff's guardian *ad litem* for the purpose of this action, pursuant to the laws of the State of New York, and his appointment as her general guardian by the surrogate of Kings county prior to the commencement of this action. The corporate
3 capacity, powers, and business of the defendants being admitted and being conceded to cover the business and policy in controversy. The plaintiffs then proved and offered in evidence the policy of insurance referred to in the pleadings, which was in the words and figures following, to wit:

Draw check to order of company.

Amount,	Premium,
$10,000.	$50.

General Accidents.

The Travellers' Insurance Company of Hartford, Conn., in consideration of the sum of fifty and $\frac{0}{100}$ dollars, does hereby insure William Edward Parker Baylis in the principal sum of ten thousand dollars for the term of twelve months, ending on the 12th day of October, eighteen hundred and seventy-three, at 12 o'clock noon. The said sum insured to be paid to Kate Josephine
4 Baylis (daughter) or her legal representatives within ninety days after sufficient proof that the insured, at any time within the continuance of this policy, shall have sustained bodily injuries effected through external, violent, and accidental means within the

intent and meaning of this contract and the conditions hereunto annexed, and such injuries alone shall have occasioned death within ninety days from the happening thereof; or if the insured shall sustain bodily injuries, by means as aforesaid, which shall, independently of all other causes, immediately and wholly disable and prevent him from the prosecution of any and every kind of business, then, on satisfactory proof of such injuries, he shall be indemnified against loss of time thereby in a sum not exceeding fifty dollars per week for such period of continuous total disability as
5 shall immediately follow the accident and injuries as aforesaid; not exceeding, however, twenty-six consecutive weeks from the time of the happening of such accident.

Provided, always, That this policy is subject to all the provisions, conditions, limitations, and exceptions herein contained or referred to, and upon the express agreement that the statements and declarations of the insured, in his application for this insurance, are warranted to be true in all respects, and that said application, together with the company's classification of hazards indorsed hereon, is referred to and made a part of this contract; and that if this policy, or any renewal thereof, has been, or shall be, obtained through misrepresentation, fraud, or concealment, or if any attempt shall be mad- by false swearing, or suppression of any material fact, on the part of the insured, to obtain any sum under this policy, or any renewal thereof, then the same shall be absolutely void.

6 Provided, always, That no claim shall be made under this policy by said insured in respect of any injury of which there shall be no external and visible sign, nor to any death or disability which may have been caused, wholly or in part, by bodily infirmities or disease existing prior or subsequent to the date of this contract, or by the taking of poison, or by any surgical operation or medical treatment for disease, nor to any case, except when the injury aforesaid is the proximate and sole cause of the disability or death; and no claim shall be made under this policy when the death or injury may have been caused by duelling, fighting, wrestling, lifting, or by over-exertion, or by suicide (felonious or otherwise, sane or insane), or by sunstroke, or self-inflicted injuries, or by concealed weapons carried by the insured, or when the death or injury may have happened in consequence of war, riot, or invasion, or of riding or driving races, or of exposure to any obvious or
7 unnecessary danger, hazard, or perilous adventure, or violating the rules of any company or corporation, or when the death or injury may have happened while the insured was, or in consequence of his having been, under the influence of intoxicating drinks, or taking part in gymnastic sports, or while employed in mining, blasting, or wrecking, or in the manufacture, transportation, or use of gunpowder, or other explosive substances, or while engaged in, or in consequence of, any unlawful act; and this insurance shall not be held to extend to any mysterious disappearances, nor to any case of death or disability the nature, cause, or manner of which is unknown or incapable of direct and positive proof.

Provided, always, That if the insured shall travel, or be beyond, or

without the limits of travel and residence, hereinafter prescribed, without first obtaining from this company, or one of its agents,
8 a special permit in writing, and paying the extra premium therefor, then this policy shall be wholly void as to all accidents occurring beyond such limits; and no indemnity shall be paid for loss of time sustained while the insured is without or beyond such limits. Said limits of travel and residence are as follows, viz: The inhabited portions or civilized abodes of the States of the United States, the Dominion of Canda, and Prince Edward's Island, and coatwise by regular lines of passenger or mail conveyance, from port to port, on the Atlantic seaboard or Gulf of Mexico; but in no event to include any voyage past or round Cape Hatteras, or upon the high seas, without special permit and extra premium therefor: Provided, however, That the insured may travel to California, or return in the cars of the Pacific railroad, without permit, the insurance being limited during said journey to such fatal or non-fatal injuries as may be received while actually riding in railway coaches
9 provided for the transportation of passengers. No insurance is granted under this contract against any fatal or non-fatal injuries caused by Indians.

Provided, always, That all which sums may be paid by way of indemnity to the insured by virtue of this policy shall be accounted in diminution of the principal sum hereby insured, so that in case of subsequent death or injury during the continuance of this policy the total amount to be paid by the said company shall not in any case exceed the principal sum hereby insured.

Claims under this policy are payable only at the company's office in Hartford, and this policy is subject also to the following conditions:

1. The party insured is required to use all due diligence for personal safety and protection, and to notify the secretary of this company immediately, and in writing, of any change from the occupation, profession, or employment under which this insur-
10 ance is granted. He is insured under classification preferred, as indorsed hereon and being a part of this contract, and this policy shall be wholly void as to all accidents occurring in any occupation, profession, employment, or exposure not named, incident to, or included in, the classification under which he is insured, unless he shall have first procured from this company or one of its agents a written permit therefor and paid the additional premium required. Standing, riding, or being upon the platforms of moving railway coaches, other than street cars, or riding in any other place not provided for the transportation of passengers, or entering or attempting to enter any public conveyance using steam or motive power while the same is in motion, or hazards not contemplated or covered by this contract; and no sum shall be paid for loss of life or disability (in consequence of such exposures) happening to any person
11 other than employees on such conveyances who shall have given notice of such occupation and paid the fixed premium for such hazards.

2. In the event of any accident or injury for which claim may be

made under this policy, or, in case of death resulting therefrom, immediate notice shall be given, in writing, addressed to the secretary of this company, at Hartford, Conn., stating the full name, occupation, and address of the insured, with full particulars of the accident and injury, and failure to give such immediate written notice shall invalidate all claims under this policy, and unless direct and affirmative proof of the same, and of the death, or duration of total disability, shall be furnished to the company within seven months of the happening of such accident, then all claims accruing under this policy shall be waived and forfeited to the company.

12 3. Any question as to the liability of the company to pay the sum insured by this policy shall, if the company, or the insured, or his legal representatives, require it, be referred to arbitration; and no suit or proceeding at law or in equity shall be brought to recover any sum hereby insured unless the same is commenced within one year from the time the right of action accrues.

4. The insured shall not be entitled to indemnity for disabling injuries beyond the amount of his ordinary wages, salary, or the money value of his time during the period of continuous total disability, not exceeding twenty-six weeks as aforesaid.

5. No claim shall be payable under this policy unless any medical adviser of the company shall be allowed to examine the person of the assured, in respect to any alleged injury or cause of death, when and so often as may be reasonably required on behalf

13 of the company.

6. The risk taken by this company on any one life is limited to ten thousand dollars and fifty dollars weekly indemnity, and no insurance, whether effected by the company's life or accident policies, shall hold good as to the surplus insured above those amounts respectively.

7. No assignment of this policy shall be valid unless made in writing, indorsed hereon, and unless a copy of such assignment shall be given to this company within thirty days after its execution, and any claim under this policy made by any assignee shall be subject to proof of interest.

8. If the company shall so elect, this policy may be cancelled at any time by refunding to the insured the premium paid by him, less a *pro ratâ* part thereof for the time said policy has been in force.

9. The actual payment of premium before the happening

14 of any accident under which claim for loss may be made, as well as all provisions and conditions aforesaid, and a strict compliance therewith during the continuance of this policy, are conditions precedent to the making of this contract, and no waiver shall be claimed by reason of the act or acts of any local agent, unless such act or waiver be specially authorized in writing over the signature of the president or secretary of this company.

10. This policy is issued only upon the express condition that the person or persons, if any other than the insured, who have procured this insurance to be taken by this company, shall be deemed the agent or agents of the insured, and not of this company in any transactions relating to this insurance, and if the premium on this

policy shall be paid to any person or persons other than the duly-commissioned agent of this company, such payment shall be at the sole risk of the insured.

15 In witness whereof The Travellers' Insurance Company of Hartford has caused these presents to be signed by its president and attested by its secretary, and delivered at the home office, in the city of Hartford, and State of Connecticut, and this policy countersigned by R. M. Johnson, agent of this company at New York office.

J. G. BATTERSON, *President.*

Attest: RODNEY DEVINS, *Secretary.*

Countersigned at New York, this 12th day of October, 1872.

R. M. JOHNSON, *Manager.*

No. 118,883.

16 The plaintiff then called ROBERT R. RHODES, as a witness, who was duly sworn, and on examination by Mr. HILL testified as follows:

I am a physician, and have been practicing in Brooklyn since 1849. I graduated in the winter of 1851. Commenced practice in 1849, the system of al-opathy, and my practice in Brooklyn has been a general one.

I am the general guardian of the plaintiff and her special guardian in this suit.

I had known William E. P. Baylis, the father of the plaintiff, about thirty years. When I first became acquainted with him he was a drug clerk; he afterwards went into business for himself, in the drug business, and remained there some time. He then left the city and went into a country store where they kept groceries,

17 drugs, &c., and after remaining there some time he then came back here; he was in different things, but no special business. I cannot tell what it was he did after he came back from the country—various things. He returned from the country I should think about five or six years before his death—that is, to Brooklyn—and lived there continually until his death, except going into the country for the summer. His family consisted only of his daughter. I did not know before his death whether he was pecuniarily embarrassed or troubled in any way; but, as administrator of the estate, I obtained information as to his affairs, from which I infer that before his death he had been pecuniarily embarrassed.

I was probably more intimate with him during his life than any other person in Brooklyn, both as his physician and socially.

18 I do not think he had any other friend with whom he was so intimate. I was his most intimate friend and he was mine.

In looking back over my experience with him I do not recall any fact indicative of a disposition to suicide. He was a man of strong religious feelings, and in his conversation never hinted at any such thing as suicide; his strong religious feeling would naturally have prevented it.

His family consisted of himself and daughter. I attended him during his last illness. When I came here to-day I left my memo-

randum book behind, and I may make some mistakes as to dates and things, but about a week or so previous to his death I was called in to attend him, and on the Monday previous to his death I was in to see him, and he had improved a great deal. When
19 I first called to see him he was suffering from influenza as the result of a cold caught. I treated him and he began to get better, and continued to improve, when he had an attack of cholera morbus, which seemed to completely shatter his nervous system. The night he had the cholera morbus he had three convulsions, which left him in a wholly nervous state. That was before Monday, I think about Friday, previous to his death. Monday was the day before he took the opium. On Monday I went in to see him and found him improved a great deal, and he proposed the next day going to New York. As I was leaving the house he asked me, on account of restlessness, if I would not give him some opiate for a quiet night's sleep. His condition when he proposed to go to business, as to his ability to go as I thought was such that
20 it would be imprudent to go. So much so that I suggested at the time that he should stop at my office on the road before going the next day. As he requested, I ordered him the preparation of opium of equal strength of laudanum, and ordered him to take twenty drops of it on going to bed, and left him at his own discretion to take it with water or not.

The next morning I had no purpose in calling on him, but I changed my mind and called somewhere between 10 or 11 o'clock. I passed in towards Miss Baylis' room. I had to pass through Mr. Baylis' room in going into Miss Baylis' room, and I found him lying on his bed on his side, and, knowing that to be contrary to his habit, I used the phrase, "Why, what are you doing there"? He did not answer me. Miss Baylis answered me, and said that he
21 had been lying that way since 5 o'clock that morning. I went to him and moved the clothing from off his face, and then discovered that something was wrong. On inquiring from Miss Baylis she told me she had gone to sleep, and somewhere during the night something had disturbed her, and she woke up and spoke to her father, who, in a rather peculiar tone of voice, said he had been up and taken a tremendous dose of opium, but that the stuff wasn't good for anything, and that if he took it again he would take the whole bottle. She went to his bedside, and there she found him breathing in an unnatural loud tone, so that she called Mr. Ostrander to him. He came in and explained Mr. Baylis' condition to be a sign of sleep as the result of exhaustion, and so he was
22 left to lie until I came in. He died from the effects of it—from the effects of opium. I do not remember seeing the remainder of the opium that I had prescribed for him, and under any circumstances it would be no guide, for this reason: I went to the druggist—I cannot remember his name—and simply told him to send some of Squibb's liquor of opium. I did not take it to him. The dose of medicine which I prescribed for Mr. Baylis, if taken by him as I prescribed it, would not have had any injurious effect. I am sure of it. I did not direct the dose to be marked on the bottle.

I told the clerk at the drug store what the dose was, and ordered the druggist to label it. I told Mr. Baylis and his daughter as well.

They were both present in the room at the time when I di-
23 rected the dose. I could determine from an examination of Mr. Baylis what the cause was which produced death. He had the symptoms of an overdose of opium.

Opium in overdose produced his death. There was nothing in the previous condition of Mr. Baylis, his disease, sickness, which produced his death or which would have produced his death independent of the opium. I could discover nothing. In my judgment his death was not caused by bodily infirmities or disease. It was not medical treatment that caused his death when the medicine is not used as directed. The nervousness which I say I discovered was a passing disturbance of the nerves. I would not call it a disease.

By the COURT: What do you call a disease?

Disease is the result from some organic changes; this ner-
24 vousness was more as a symptom than the disease itself.

Cross-examined by Gen'l MATHER:

I should imagine that Mr. Baylis was about forty-five years old at the time of his death; I don't remember. I knew him as a drug clerk at Doctor Osborn's, corner of High and Bridge streets, Brooklyn. I think he was there about a couple of years. After that he was a druggist at the corner of Classon avenue, Brooklyn. I think he was about ten or twelve years in that business.

I never transacted any business with him as a druggist. In regard to this last illness, I don't remember the day I was first called in to see him as his physician; it was about ten days—from a week to ten days—before his death. When I first called to see him he

was suffering from influenza, a species of cold. I do not
25 know whether I prescribed anything for him on that occasion. I have no doubt I did. I suppose I next saw him after this first visit the next day; I cannot remember. It is too long since; I saw him every day; I think I did, as near as I can remember.

I do not know how I found him on my second call; I do not know whether I prescribed anything for him on my second call; I have told you already there were things I cannot remember; I really do not remember whether I prescribed for him on the second day or not; I know he continued to get better, until he had this attack of cholera morbus; I think that was about the Friday previous to his death; I think I called on him every day, from the

first down to the time of his death, as his physician; I first
26 prescribed opium for him, the night previous to the day of his death, on Monday; he was to take it Monday night, and he died early Tuesday morning; I prescribed twenty drops of Squibb's liquor of opium; that is equivalent in its effects to laudanum by the drops; it is made purposely to represent the same strength as laudanum; that was on Monday; I only directed the

twenty drops to be taken once; I think it was either Saturday or Sunday that I prescribed the chloral to him; he had taken that one or two days before with my prescription.

By Mr. HILL:

On either Friday or Saturday, I think, that was taken.

By Gen'l MATHER:

I think I prescribed twenty grains of that; that is my impression; I presume I ordered it to be repeated in the course of an hour or two in case it had no effect.

27 By the COURT: Each hour?

Yes, sir.

I feel certain I did not prescribe it for each half hour; I do not know; I presume I testified at the coroner's inquest to about what I testify to now.

The Monday prior to his death was the first time I prescribed opium; it was to be taken on going to bed, bedtime; I was there on Monday, between 10 and 11 o'clock; that was the day; he spoke about business the next day; I did not advise him not to go; did not say so; I did not tell him; it was not worth while; I only said it was imprudent to go, and advised him to stop at my office on the way; my opinion on that advice was based on his nervous system being so disordered; I did not think disturbed nerves was a disease in his case; I looked upon the nervous condition he was in as a
28 result of an attack of cholera morbus; the symptoms indicate the disease, but they are not the disease; the nervousness was not the disease, but the cholera morbus was a disease.

I did not see him again until Tuesday morning; I have stated all along that it was Tuesday morning; it was on Monday night that he fell into this sleep, and some time Monday morning I was there and ordered the medicine, and I was there on Tuesday, some time in the morning, about ten o'clock, I suppose, when the daughter told me what her father had done; I never saw the bottle which contained the preparation there; never knew how much there was in it, and knew nothing of how much he took; I do not know he took any, except what the daughter told me, and the symp-
29 toms; there was nothing different in the symptoms from what there would have been in an apoplectic case; my opinion of the cause of his death was not based rather upon the statement of the daughter than what I saw; the statement of the daughter was confirmed by the symptoms; they confirmed the statements.

The reasons why I should think it was the medicines and not apoplexy are: Mr. Baylis was not in an overstrong condition; he had none too much blood, which is one of the causes of apoplexy; in addition to that he had not given any signs of stupor, which usually precedes an attack of apoplexy.

I make that application from a knowledge of the man's previous condition, rather than his then appearance, and the symptoms seen; I should think Mr. Baylis was about 5 feet six inches in height,

and somewhere about 120 lbs in weight. He was a small man, not over 120 pounds, & I don't think over 5 feet 6 inches in height. I don't know what were his habits of diet. I don't know what his habits of eating were. I never saw any evidence of excess about him in any way. I spoke of his condition, not having too much blood, &c., as a reason why he might not have had apoplexy.

Apoplexy sometimes results from what is called anemia; there is no question about that.

Q. Why, then, do you make this case an exception?

A. Your symptoms in apoplexy resulting from deficiency of blood are different from those where there is an excess of blood. You don't find congestion where there is a lack of blood, as where you do where there is an excess of blood.

There were, then, symptoms in this case that indicated it was not a case of apoplexy from anemia.

Opium would tend to produce such a condition of the brain as to induce cerous or sanguin-ous apoplexy.

My impression at the time was that there was no cerous effusion. There was no post-mortem made; I derive my conclusions from the fact that the stupor did not increase in intensity, which probably would have been the result if there had been additional pressure on the brain from the effusion.

Re-examined by Mr. HILL:

I examined Mr. Baylis and the pupil of his eye. It appeared contracted to a point; that is not the indication of apoplexy ordinarily; it is a distinct and positive evidence, and so regarked among physicians, of taking opium. It is a settled rule among physicians that that is an unmistakable evidence of some narcotic. The chloral which has been spoken of was, I think, prescribed the Friday preceding the prescription of opium; there was no evidence of any effect of chloral in the system on Monday that I saw. I stated substantially that the nervousness I saw was a result or symptom of disease, but not the disease itself. It was the symptom that was left of the disease which had terminated.

Q. What sort of derangement of the system produces what you call death by apoplexy?

A. As the result of either impeded circulation coming through the brain, or as the result of increased action sending blood to the brain, you will have what is called this congestive apoplexy, which results in the brain receiving an undue supply of blood, which virtually acts as compression of the brain from the inside, and you have the stupor resulting.

Drowsiness, sleepiness is one of the evidences of compression of the brain. A sonorous, snoring sound is one of the symptoms of compression of the brain.

From my long acquaintance and intimacy with Mr. Baylis I had plenty of opportunities of discovering whether there were symptoms of apoplexy about him.

Where I have had opportunities of observing I do not know of any case of apoplexy where symptoms were not observed prior to

death, or any case of apoplexy without any premonitory symptoms, and I should think it would very rarely take place.

The premonitory symptoms of apoplexy would be headache and sleepiness more or less; but two of the most usual symptoms
34 are unnatural sleepiness and cloudiness of reason, stupid condition of the head.

When I first entered the room on Tuesday morning I observed him lying there, and that called for an exclamation from me to Miss Baylis' father. Her answer was that he had been so since 5 o'clock that morning.

As he was lying there there was nothing about his position or about him which surprised me at that moment, but, upon her speaking, which called my attention more particularly to him, I noticed he was lying in a strained, unnatural position. I cannot say whether anything about the appearance of the man would have excited my suspicion if I had not been told by the daughter, as he was under the bed clothes.

By Gen. MATHER:

I am no relation to Mr. Baylis by blood or marriage.

35 I did not observe any sonorous sleeping or snoring in his case, but heavy breathing.

I never said that sanguin-ous apoplexy never kills a man without premonitory symptoms. I said that apoplexy was generally preceded by these symptoms.

I speak from my personal experience, that is all.

I know from reading that this is not the case.

I cannot state directly, by yes or no, whether sanguin-ous apoplexy is fatal in any case without premonitory symptoms. I will answer, so far as the evidence goes, yes; but I think it is probable that in all these cases there are probably premonitory symptoms, though not spoken of by the one suffering from apoplexy, and not observed by others. Sanguin-ous apoplexy is usually attended with a rupture, a lesion of the brain, which is usually apparent on post-mortem, but not invariably. Among scientific
36 men opium is ranked as a narcotic poison; chloral is also classed as a narcotic poison; I should rank chloral as a narcotic poison; chloral is more dangerous than opium, because its effects are uncertain; they are not as certain as opium; I mean by uncertainty that one person will take a dose with a certain effect; another person taking that same dose will die from the effects of it; you get the result either in half an hour or an hour; I do not think that scientific men call chloral "cumulative;" I am not accustomed to prescribe it; I don't like the medicine; I use it very rarely, because the results are so uncertain, but it is usually prescribed, to be repeated if necessary; I prescribed chloral the last week before his death; I think about Friday; some was administered on Monday night after that one dose; the orders were to take one dose
37 at bedtime, and with that dose 20 drops of liquid opium; he was taking at bedtime the chloral, and the 20 drops of opium was additional to that; the effect, as I have observed it, of chloral

are usually in from fifteen minutes to an half an hour after taking it the person will go off into a quiet sleep, lasting usually as long as a person would take his natural sleep; that is, from 6 to 8 hours; it usually comes on if it acts within half an hour; if it don't have any result in that time it usually don't have any effect at all; I prescribed it in solution.

Q. Let me ask you whether the effect and the time it manifests itself does not depend very much upon the condition of a man's stomach?

The condition of a man's stomach I should think would naturally affect the medicine; medicines are more readily absorbed on an empty stomach than on a full stomach; when it acts it usually acts in half an hour, if it acts at all; by action I mean its absorption into the system and its effects produced thereby; if the dose manifests its effects it is usually as a narcotic; I rank it as a narcotic, and it is usually ranked as a narcotic.

By Mr. HILL:

On Monday night the customary dose of chloral was given. I think it was 20 grains, in solution, in water. I don't know how general the rule is, that chloral will act within fifteen or twenty minutes after it is taken. It is generally regarded as a rule, that if it does not act within a half an hour it will not act at all—so regarded usually.

By Gen'l MATHER:

I do not think I prescribed each half hour in case it did not take effect; I think he was to take but the single dose. As I said, I don't like to use the medicine. I don't remember what I testified to as regards that before the coroner's jury; I don't recollect whether I said once an hour or once every half hour.

By a JUROR:

I prescribed these two doses, the opium and the chloral together, same time.

KATE JOSEPHINE BAYLIS, being sworn, testified as follows:

I am the plaintiff in this action. I have heard the testimony of Dr. Rhodes. I cannot remember all that occurred during the day of the Monday before my father died. Do you mean in regard to him—how he acted? He was in his room lying down, and then sitting up. He lay down and sat up, as it happened to be. He had not retired; I think he retired about half past nine or 10 o'clock; I don't remember exactly. He then came in my room to take the medicine, and I gave him the chloral, and was going to give him the opium. I did not want him to take the opium, but he wanted to take it. I wanted to administer it to him because of his trembling, but he said he could handle it. He said he had handled medicines long enough to be careful. He took the dose and then went right to bed.

By the COURT:

I saw him take the opium myself. He stood with his back towards me, so I do not know how much he took. I did not go to bed immediately after. I remained up not longer than three quarters of an hour, and then I retired. I don't know whether my father was then asleep; I do not think he was. I should suppose I awakened about 4 o'clock in the morning. He then told me that he had been up and taken a large dose of opium, and that it was
41 worthless stuff, and if he took a whole bottle of it it would not do him much good, or something to that effect. He was awake when I awoke. He was back in his bed, but said that he had been up. I think he said he had not been to sleep. I did not go to sleep again. He began to breathe very heavily indeed. Nothing then occurred. He made me quite uneasy, so that I could not sleep, and about half-past 5 or 6 o'clock Mr. Ostrander was called in. He came in and quieted my fears, and it seemed to be quiet then. He was sleeping, for he had not been able to do so for a long time. In consequence of what Mr. Ostrander said to me I did not send for a physician. I remained home with him that morning all the time until the doctor came in. He did not wake at all again from that time, when I first woke, until the doctor arrived. He did not
42 awake at all or become conscious again during his life. His death occurred early Wednesday morning, about half-past 6 or 7 o'clock; somewhere along there. My father's habits in regard to eating were temperate; he was not a hearty eater.

By Gen'l MATHER:

I was with my father all day on that Monday. He took no medicine that day, except what I gave him, that I know of. I don't think he took any during the day-time. The first medicine that he took was about half past 9 o'clock at night; then he took chloral and opium. According to my recollection, I know he had not taken any before that during the day. I saw the vial or bottle in which the opium was. I don't think the bottle was full; I think not more than about half full; I don't remember; it was a small bottle; I really don't remember—2½ inches high, perhaps. I don't know
43 whether a bottle 2½ inches high will hold a pint or not; I know nothing about the quantities; I did not notice the bottle particularly after he had taken from it; I saw it, but not to remember how it looked; it was not empty; I think I said the bottle was about half full before he took it; it was a little more than half full; how it was after that I don't know; I was excited and did not notice it particularly.

By the COURT:

I did not take the bottle in my hand at the time purposed to take the opium. I believe the vial was on the mantelpiece, and he came in and took it up. I think it was about half full as he took it up. He declined to have me pour this medicine for him, and stated that he had handled medicine long enough, and would be careful in

taking it—something of that kind. I don't think he told me
44 at that time that he had not been asleep. It seems to me that he did, though I do not remember.

At the time he took the chloral from me he said nothing about not having been asleep. I know he had not been asleep at the time he took the chloral.

When I awoke at 4 o'clock he said he had not been asleep. My attention was next attracted to him by his heavy breathing. I do not know whether it was snoring; it was loud—hard; he seemed to breathe with great difficulty.

Dr. RHODES recalled:

By Mr. HILL:

I have only heard part of Miss Baylis' testimony; I was talking at the time.

I heard her state that her father told her when she awoke about 4 o'clock in the morning that he had not been asleep.

If the chloral had operated upon Mr. Baylis at all it would
45 have made its appearance and produced sleep before 5 o'clock in the morning. I have no doubt in my mind that it would have done so.

The chloral together with the opium as I prescribed it, and as Miss Baylis says it was taken, at 9 o'clock in the morning, was not dangerous, in my judgment, at all.

After what I have heard Miss Baylis state here I have no doubt, as a physician, but that death in this case resulted from an overdose of opiate. The chloral had nothing to do with it.

By Gen'l MATHER:

There are idiosyncrasies by reason of which a small dose of a narcotic will produce death in some cases when it will not in others.

The fact in this case, which takes the case of Baylis out of the possibility of being one of those idiosyncrasies, is the fact that
46 the dose was given him between 9 and 10 o'clock and that the next morning he was still awake. If the dose that was given at 9 or 10 o'clock had been sufficient to have killed him, he would have — resulting before that. I think that is always true as near as I can judge. I cannot recall any athorities in my profession showing that narcotism may be delayed six or eight hours after the taking of the narcotic, but I can imagine such a thing; that there might be causes which would delay narcotism, but I do not remember of reading of any of that kind.

I know of my own experience that it is more or less delayed, but not for hours like this; persons being in great pain, for instance, will take large doses of an opiate without any effect; the pain being removed, then the opiate will have its effect. In some
47 cases, such as delirium tremens, you will give your narcotic; it will have no effect; it lies in the stomach an unusual time before it begins to act, and then you have the whole acting at the same time.

The authorities differ somewhat as to whether delirium tremens is a nervous affection. The latest opinion is that it is the result of alcohol causing atrophy of the brain; that delirium tremens is the result of that atrophy. Atrophy is the lessening of size, shrinking of the brain. It is always attended with a disturbance of the nervous system; it is always attended with a nervous excitability. The nervous disturbance is extreme. Opium manifests its effects in about half an hour usually. I really do not know the range beyond that. If we want to get the effects of it, and it does not act in half an hour, we repeat the dose.

By Mr. HILL:

There are none other idiosyncrasies in this case to meet
48 the conditions which Gen'l Mather proposes to me, that I know of.

There was nothing about Mr. Baylis' system, the condition of his stomach, or state of his system generally which should interfere with the general rule that chloral or opium or both should operate within from fifteen to twenty minutes to half an hour; that I say as a physician attending him, and having known him some years.

By Gen'l MATHER:

We cannot discover the idiosyncracies until we try the medicine.

By Mr. HILL:

I only gave one dose of chloral and opium to Baylis, before that I had been giving chloral alone.

If there had been any special causes, such as the counsel has referred to, it is probable I would have discovered them, but not
49 absolutely certain, it is what I may say altogether probable.

By Gen'l MATHER:

Q. Are not chloral and opium substantially different as a remedial agent?

Chloral and opium are both narcotics; the chloral produces a more natural sleep than the opium does.

It was conceded that the question of suicide is not to be deemed raised by the evidence.

The testimony being closed, Gen'l Mather moved to dismiss the complaint on the ground that the evidence was insufficient to sustain a verdict.

Mr. Hill opposed this motion and insisted that the evidence presented questions of fact which ought to be submitted to the jury, and asked that the case be submitted to the jury to determine upon the evidence.

1. Whether or not the death of the assured was the result
50 of accident. (2.) Whether or not the death resulted from a mistake as to the kind—*i. e.*, chloral or opium—of medicine intended to be taken. (3.) Whether or not, if deceased took opium intentionally, death resulted from a mistake as to the quantity which

he actually took. (4.) Whether, if deceased intended to take the opium, the death resulted from a mistake as to its power. (5.) Whether or not the death resulted from external, violent, and accidental means within the meaning of the policy. (6.) Whether or not the death arose from any of the excepted causes stated in the policy.

Mr. Hill, plaintiff's counsel, also seperately asked the court to hold and rule and charge the jury as matter of law.

The court refused to submit to the jury the question whether or not the death arose from a mistake as to the quantity of opiate taken by the deceased, and held that there was no evidence sufficient
51 to warrant a finding of such mistake. And the plaintiff's counsel duly excepted.

The court refused to submit the cause to the jury, and the plaintiff's counsel duly excepted.

The court then directed the jury to render a verdict for the plaintiff for the full amount claimed; that is to say, $10,000 with interest, $1,123.60, amounting in all to the sum of $11,123.60. And the defendant's counsel duly excepted.

The jury thereupon rendered a verdict for the plaintiff for the sum of $11,123.60.

The defendant's counsel then moved to set aside the verdict on the pleadings and minutes of trial. The court reserved the question for argument.

The said motion came on for hearing on the 5th of January, 1877, when the questions were fully argued, and thereupon the plaintiff's counsel seperately requested the court to find, hold, and rule as matter of law.

52 That the plaintiff was entitled to judgment upon the verdict, but the court refused so to find, hold, or rule, and the plaintiff duly excepted.

Thereafter, and on the 24th of February, 1877, his honor delivered an opinion in writing, which is as follows, to wit:

This action is brought upon a policy of insurance against accident, issued by the defendants, whereby they agree to pay to the plaintiff the sum of $10,000 "within ninety days after sufficient proof that the insured, William E. P. Baylis, at any time within the continuance of the policy, shall have sustained bodily injuries effected through external, violent, and accidental means, within the intent and meaning of this contract and the conditions hereunto annexed, and such injuries alone shall have occasioned death within ninety days from the happening thereof." The contract contained the following proviso: "Provided, That this insurance shall not extend to any death or dis-
53 ability which may have been caused wholly or in part by any surgical operation or medical or mechanical treatment for disease." The cause was tried before the court and a jury, when, upon the evidence adduced, a verdict for the plaintiff was directed, subject to the opinion of the court upon the question whether the facts proved were sufficient to render the defendants liable upon their policy. The following are the facts as delivered from the evi-

dence, and in stating them I adopt the conclusions of fact most favorable to the plaintiff that the evidence will permit to be drawn: The insured died on the 20th of November, 1872. A week or so previous to his death he was suffering from influenza, the result of a cold, and was then treated therefor by his physician. He began to get better, when, on Friday night, before his death, he
54 had an attack of cholera morbus, accompanied with convulsions, which seemed to completely shatter his nervous system, and left him in a wholly nervous state. On Monday following he was again better, proposed to go to business, and asked his physician, onaccount of restlessness, to give him some opiate for a quiet night's sleep. The physician ordered a preparation of opium, and directed him to take twenty drops of it before going to bed. He was at this time taking chloral, under the same medical advice, and the opium was directed to be taken in addition to a prescribed dose of chloral. That night the insured took the prescribed dose of chloral, and, as may be inferred from the facts shown, a dose of opium also. There is no direct evidence as to quantity of opium he took, but I shall treat the case as if the
55 evidence respecting the symptoms that followed, and the actions of the insured was sufficient to warrant a jury in finding that, through inadvertence, the insured took more opium than he intended to take, and such a quantity that his death was caused thereby. It is by no means clear that such finding would be warranted by the evidence given, and it is certain that no conclusion more favorable to the plaintiff can be drawn from the proofs. I am therefore to determine whether, as matter of law, such a death is within the scope of the policy sued on. Upon this question my opinion is adverse to the plaintiff. As I view the evidence the death was caused by "medical treatment for disease," and, if so, it was excepted by the terms of the policy.

The contention in behalf of the plaintiff is that the opium was not administered by the hand of a physician, and, more-
56 over, was not the dose directed by the physician to be taken, but was a dose taken by the insured upon his own judgment, and that these facts take the case out of the exception in the policy. But it must be conceded that the opium which caused the death was taken by the insured with the object of allaying the nervous excitement from which he was suffering. Certainly then this was disease. The advice of a physician had been taken as to its cure. It is equally certain that there was a treatment of this disease, for the remedy prescribed by the physician was taken, although in excessive quantity, and the opium taken was so taken because the physician had prescribed it to remedy the disease. The opium was taken with no other object than to effect the result which the
57 physician had advised should be attained by using opium. Under these circumstances the fact that the patient deviated from the direction given by the physician in the matter of amount, and, upon his own judgment, took a larger dose than had been directed, does not change the character of the act. The object of the insured in taking the opium he did was to cure or else to kill.

The facts repel the idea of an intention to kill and prove the intention to cure. Death caused by such an act, done with such an intent, is, in my opinion, a death caused wholly or in part by medical treatment for disease, and, therefore, is not covered by the policy. I am also of the opinion that the facts do not disclose a case of bodily injury effected through "external, violent, and accidental means," occasioning death, within the meaning of the policy.

58 I do not consider that violence can fairly be said to be an ingredient in the act of taking a dose of medicine, although the medicine be destructive in its action and death the result.

These considerations compel to a denial of the motion for judgment in favor of the plaintiff, and a direction that judgment for the defendants be entered.

To which ruling and conclusion the plaintiff duly excepted.

Thereupon the defendant caused judgment to be entered in the cause, the roll in which is as follows:

59 *Summons for a Money Demand on Contract.*

In the City Court of Brooklyn.

KATE JOSEPHINE BAYLIS, by ROBERT R. RHODES, Her Guardian *ad litem*, Plaintiff,
against
THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD CONN., Defendant.

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on the subscribers at their office, No. 20 Nassau street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten thousand dollars, with interest from the 12th day of November, one thousand eight hundred and seventy, besides the costs of this action.

Dated New York, August 27, 1873.

BARRETT, REDFIELD & HILL,
Plaintiff's Attorneys.

60 In the City Court of the City of Brooklyn.

KATE JOSEPHINE BAYLIS, by ROBERT R. RHODES, Her Guardian *ad litem*,
against
THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD, CONN.

The plaintiff, complaining of the defendant, alleges and avers:

1. That heretofore, to wit, on the 22nd day of August, 1873, upon her petition Robert R. Rhodes was duly appointed her guardian *ad*

litem for the purposes of this action, and by her said guardian she now further complaining alleges—

2. That the defendant is a corporation authorized and organized under the laws of the State of Connecticut, and duly empowered to incur the obligation hereinafter set forth.

3. And on the 12th day of October, 1872, the defendant, in consideration of fifty dollars duly paid to it in behalf of the plaintiff, did insure William Edward Parker Baylis, who was the father
61 of the plaintiff, in the sum of ten thousand dollars for the full term of one year from that day, the said sum to be paid to the plaintiff in case said assured should accidentally sustain bodily injuries which should produce death within ninety days.

4. And the said assured having fully kept all the conditions of said contract on his part, at the city of Brooklyn, on or about the 20th day of November, 1872, did sustain bodily injuries accidentally, to wit, in that wholly by accident he took certain drugs and medicines which, as taken by him, were poisonous and deadly, when in fact he intended to take wholly a different thing and in different manner; and that in consequence of said accident solely said assured died at said city on said 20th day of November, 1872. And

5. That thereafter the plaintiff caused due notice of said accident and its results thereof to be immediately given to the defendant, and thereby it became and was bound to pay the plaintiff the said sum of ten thousand dollars. A demand was then and there
62 made by one duly authorized to receive, receipt for, and discharge said obligation; but the defendant, wholly ignoring its duty in the premises, refused, and still neglects and refuses, to pay the same or any part thereof.

Wherefore the plaintiff demands judgment against the defendant in the sum of ten thousand dollars, with interest from the 20th day of November, 1872, besides the cost of this action.

BARRETT, REDFIELD & HILL,
Plaintiff's Attorneys, 20 Nassau Street, N. Y.

63 In the City Court of the City of Brooklyn.

KATE JOSEPHINE BAYLIS, by ROBERT R. RHODES, Her Guardian *ad litem*,

against

THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD, CONN.

The said company defendants, for answer to the complaint in this action, say:

First. They deny each and every matter and thing alleged, averred, or stated in said complaint, saving and excepting only so much and such parts of said matters and things and in the manner and form as is hereinafter specifically admitted.

They admit that they are a corporation authorized, organized, and empowered as in said complaint is stated.

They admit that on or about October 12, 1872, in consideration

of fifty dollars paid to them, they, by a formal contract in
64 writing, known as a policy, insured William E. P. Baylis, as stated in said contract or policy, in the sum of ten thousand dollars, for the full term of one year from that date, and that said sum was to be paid to Kate J. Baylis, or her legal representatives, upon certain events, terms, conditions, and provisions as in said contract or policy is fully and particularly set forth, but not upon such events, terms, conditions, and provisions as are alleged, averred, or stated in said complaint; all of which allegations, averments, and statements defendants deny.

They admit that in the city of Brooklyn, on or about November 20th, 1872, the said insured took poisonous and deadly drugs, and that from and by reason of his so doing he died on that day; but deny that he took such accidentally or by accident, or with the intent, or under the circumstances stated or mentioned in the complaint.

65 They admit that such ten thousand dollars has been demanded, and that payment thereof was refused.

Second. For other and separate matters of defence defendants say that material parts of said contract or policy were and are printed in these words, viz:

"The said sum insured to be paid to ——, or ——, legal representatives, within ninety days after sufficient proof that the insured at any time within the continuance of this policy shall have sustained bodily injuries effected through external, violent, and accidental means within the intent and meaning of this contract, and the conditions hereunto annexed, and such injuries alone shall have occasioned death within ninety days from the happening thereof."

"Provided, always, That this policy is issued and accepted subject to all the provisions, conditions, limitations and exceptions herein contained, or referred to."

"Provided, always, That this insurance shall not extend to any bodily injury of which there shall be no external and visible
66 sign, nor to any death or disability which may have been caused wholly or in part by bodily infirmities or disease existing prior or subsequent to the date of this contract, or by the taking of poison, or by any surgical operation, or medical or mechanical treatment for disease, nor to any case except where the injury aforesaid is the proximate or sole cause of the disability or death.

"And no claim shall be made under this policy when the death or injury may have been caused by duelling, fighting, wrestling, lifting, or by overexertion, or by suicide, felonious or otherwise, sane or insane, or by sunstroke, or self-inflicted injuries."

And defendants allege and aver, that upon or under said contract or policy, and the terms, provisions, and conditions thereof as aforesaid, they are not and never have been bound to pay or indebted to plaintiff in said sum of ten thousand dollars, or any part thereof. Wherefore they demand judgment against plaintiff for their costs in this action.

THOS. C. ENNEVER,
Defendant's Att'y.

67 United States Circuit Court, Eastern District of New York.

KATE JOSEPHINE BAYLIS, by Robert R. Rhodes, Her Guardian *ad litem*,

against

THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD, CONN.

This action having been commenced and issues joined therein, in the city court of Brooklyn, in the county of Kings, and State of New York, as shown by the foregoing summons, complaint, and answer, such proceedings on the part and behalf of the said defendants, a corporation created, organized, and doing business under and by virtue of the laws of the State of Connecticut, were afterwards had under and pursuant to the laws of the United States of America; that an order was duly made and entered in said city court of Brooklyn; that said suit or action be removed into the next
68 circuit court of the United States, to be held in the eastern district of New York, and that said city court would proceed no further therein. And thereupon, at or about the same time certified copies of said summons, complaint, answer, and all other papers as in such case is required by law, were duly filed in said circuit court, and said suit or action was thereto duly removed, and a proper order was duly made by and entered in said circuit court, reciting the due removal thereof as aforesaid into said circuit court, and directing that said suit, action, or case be prosecuted as if originally commenced in said circuit court.

That thereupon at a term of said circuit court held in said city of Brooklyn on October the 9th, 1874, before the Honorable Charles L. Benedict, presiding judge, and a jury duly empanelled and sworn, came the said plaintiff and said defendants, by their attorneys respectively, and said action was duly brought to trial.

69 Thereupon plaintiff's attorney put in evidence the policy of insurance mentioned in the pleading aforesaid; also two other exhibits, marked respectively A and B, and produced and examined as witnesses the said plaintiff and her said guardian *ad litem*, and then rested the case on plaintiff's part and behalf.

Defendants' attorney thereupon moved said court to dismiss the case on the ground that upon the facts proved and the law defendants were not liable in this action.

The said court thereupon decided and denied said motion; to which decision and denial defendants' attorney then and duly excepted.

Thereupon the court ordered and directed the jury to find a verdict for the plaintiff in the sum of ten thousand dollars, with interest, subject to the opinion of the court; and the jury, pursuant to such direction, did find a verdict for that sum, with interest subject to the opinion of the court, upon the question whether the facts
70 proved were sufficient to render the defendants liable upon their policy.

Afterwards, at a term of said circuit court held in said city of Brooklyn on January 5th, 1877, before the Honorable Charles L. Benedict, presiding judge, to which term and day said cause had

been duly continued, came the said plaintiff and the said defendants by their attorneys, respectively, and said plaintiff by her attorney then and there moved said court for a judgment in her favor upon said verdict.

Now, all and singular the premises being seen and by the said court now here fully understood, and mature deliberation being thereupon had, it seems to the said court that said plaintiff is not entitled to a judgment, wherefore the said court denies the motion for judgment in favor of said plaintiff, and, on motion of defendant's attorney the said court orders and directs that judgment for the said defendants be entered herein with costs.

71 Therefore it is considered, ordered, and adjudged by the said circuit court that the said The Travellers' Insurance Company of Hartford, Connecticut, defendants as aforesaid, do recover against the said Kate J. Baylis, by Robert R. Rhodes, her guardian *ad litem*, plaintiff as aforesaid, their said defendants' costs in this action to the amount of eighty-five dollars and three cents, and that said defendants have execution, &c., therefor.

CHAS. L. BENEDICT.

(Endorsed:) Judgment roll. T. C. Ennever, def'ts' attorney. Filed March 13th, 1877.

72 And thereupon upon the plaintiff's application a writ of error was duly issued out of and under the seal of this court, which is as follows:

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of New York, Greeting:

Because — the records and proceedings as also in the rendition of a plea which is in the said circuit court before you, between Kate J. Baylis, by her guardian *ad litem*, Robert R. Rhodes, and the Travellers' Insurance Company of Hartford, Connecticut, in which judgment was rendered March 13th, 1877, a manifest error hath happened to the great damage of the said Kate J. Baylis, as by her complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice be done

73 to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the Supreme Court of the United States at the Capitol, in the City of Washington, together with this writ, so that you may have the same at the city of Washington before the judges aforesaid on the second Monday of October, 1877, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said judges of the said Supreme Court may cause further to be

done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of May, in the year of our Lord one thousand eight hundred and seventy-
74 seven, and of the Independence of the United States the one hundredth and first.

[L. S.] B. LINCOLN BENEDICT, *Clerk.*

And thereupon the plaintiffs duly filed and served upon the defendants' attorneys a notice of appeal, of which the following is a copy:

75 United States Circuit Court, Eastern District of New York.

KATE JOSEPHINE BAYLIS, by Robert R. Rhodes, Her Guardian *ad litem*, Pl'ff & Appll,

against

THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD, CONNECTICUT Def'd't & Resp'd't.

Take notice that the plaintiff appeals to the Supreme Court of the United States from the judgment of the circuit court of the United States, eastern district of New York, in this action, entered March 13, 1877, and from the order denying a motion for a new trial, and from each and every part thereof.

Dated N. Y., March 30, 1877.

Yours, &c., REDFIELD & HILL,
Att'ys for Pl'ff & App'll.

THOS. C. ENNEVER, *Att'y for Def'd't & Resp'd't.*
Clerk of U. S. circuit court.

Endorsed: Notice of appeal. Filed April 4, 1877.

76 And now, for the reason that the proceedings intermediate the joining of the issue and order for judgment, after argument upon the motion to set aside the verdict, does not otherwise appear of record, the court hath hereto settled and filed this bill of exceptions (which contains all of the evidence) to the end that error, if any there be in said proceedings and judgment, may be made fully to appear.

October 20, 1881. CHAS. L. BENEDICT.

Endorsed: Bill of Eceptions. Filed October 20, 1881.

77 United States Circuit Court, Eastern District of New York.

KATE JOSEPHINE BAYLIS, by ROBERT R. RHODES, Her Guardian *ad litem*, Pl'ff & App'll.,

against

THE TRAVELLERS' INSURANCE COMPANY OF HARTFORD, CONN., Def'd't & Resp'd't.

Take notice that the plaintiff appeals to the Supreme Court of the United States from the judgment of the circuit court of the United States, eastern district of New York, in this action, entered March 13, 1877, and from the order denying a motion for a new trial, and from each and every part thereof.

Dated N. Y. March 30, 1877.

Yours, &c., REDFIELD & HILL,
Att'ys for Pl'ff & App'll.

THOS. C. ENNEVER, *Att'y for Def'd't & Resp'd't.*
Clerk of U. S. circuit court.

Endorsed: Notice of appeal. Filed April 4, 1877.

78 Know all men by these presents, that we, Abijah Whitney, of the city of Brooklyn, county of Kings and State of New York, and Jesse J. Whitney, of the same place, are held and firmly bound unto the Travellers' Insurance Company of Hartford, Connecticut, in the sum of two hundred and fifty dollars, to be paid to the said Travellers' Insurance Company of Hartford, Connecticut, its successors or assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the fourth day of May in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas Kate Josephine Baylis, by Robert R. Rhodes, her guardian *ad litem*, as plaintiff in error, has appealed to the Supreme Court of the United from a decree of the circuit court of the United States for the eastern district of New York, bearing date the 13th day of March, 1877, in an action in which said Kate Josephine Baylis, by
79 Robert R. Rhodes, her guardian *ad litem*, was plaintiff, and the Travellers' Insurance Company of Hartford, Connecticut, defendant:

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error, Kate Josephine Baylis, by Robert R. Rhodes, her guardian *ad litem*, shall prosecute said writ of error with effect, and pay all damages and costs which shall be awarded against her as such plaintiff in error therein if she shall fail to make said writ of error good, and if in case said judgment, or any part thereof, be affirmed, or the writ of error be dismissed, the said plaintiff in error shall pay the amount directed to be paid by the judgment, or the part of such judgment as to which the judgment shall be affirmed, if it be affirmed only in part, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

A. W. WHITNEY.
J. J. WHITNEY.

Sealed and delivered and taken and acknowledged, this 4th day of May, 1877, before me—

JOHN FRANKENHEIMER.

80 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Abijah Whitney, being duly sworn, deposes and says: That he resides in the eastern district of New York, at No. 100 Lafayette avenue, in the city of Brooklyn; that he is worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

A. WHITNEY.

Sworn to, this 4th day of May, A. D. 1877, before me—
JOHN FRANKENHEIMER,
Notary Public, N. Y. Co., (41).

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Jesse J. Whitney, being duly sworn, deposes and says: That he resides in the eastern district of New York, at No. 150 Van Buren street, in the city of Brooklyn; that he is worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

J. J. WHITNEY.

Sworn to, this 4th day of May, A. D. 1877, before me—
JOHN FRANKENHEIMER,
Notary Public, N. Y. Co., (41).

Endorsed: Bond on appeal. Approved as to form and sufficiency. Dated May 10, 1877. Chas. L. Benedict, U. S. judge. Filed and recorded May 16, 1877.

81 U. S. Circuit Court for the Eastern District of New York.

KATE J. BAYLIS, by ROBERT R. RHODES, Her Guardian *ad litem*,
ag'st
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONN.

We hereby consent to the appointment and substitution in our place of John J. Thomasson, of No. 20 Nassau street, New York city, as attorney for the plaintiff herein.

Dated October 19, 1881. REDFIELD & HILL,
Att'ys for Plaintiff.

Endorsed: Consent of substitution. Filed October 20, 1881.

82 At a stated term of the circuit court of the United States for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the —— day of October, in the year of our Lord one thousand eight hundred and eighty-one.

Present: The Honorable Charles L. Benedict, district judge.

KATE JOSEPHINE BAYLIS, by *her* ROBERT R. RHODES, Her Guardian, *ad litem*,
versus
THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

On reading and filing the annexed consent of Redfield and Hill, attorneys for plaintiff herein, and on motion of John J. Thomasson, it was ordered John J. Thomason be, and he is hereby, substituted in place of Redfield and Hill as attorney for plaintiff herein.

CHAS. L. BENEDICT.

Endorsed: Order of substitution. John J. Thomasson, attorney for plaintiff. Filed and entered this 20th day of October, 1881.

83 UNITED STATES OF AMERICA, } *ss.*:
Eastern District of New York, }

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the foregoing pages, numbered from one to eighty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Kate Josephine Baylis, by Robert R. Rhodes, her guardian *ad litem*, plaintiff, *versus* The Travelers' Insurance Company of Hartford, Connecticut, defendant, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this twenty-first day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the said United States the one hundred and six.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

84 *Writ of Error.*

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the judges of the circuit court of the United States for the eastern district of New York, Greeting:

Because in the records and proceedings, as also in the rendition of a plea, which is in the said circuit court, before you, between Kate J. Baylis, by her guardian *ad litem*, Robert R. Rhodes, and The Travelers' Insurance Company of Hartford, Connecticut, in which judgment was rendered March 13th, 1877, a manifest error hath happened, to the great damage of the said Kate J. Baylis, as by her complaint appears: We being willing that the error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you may have the same at the city of Washington be-

fore the judges aforesaid on the second Monday of October, 1877, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said judges of the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of May, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and first.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

[Endorsed:] Kate J. Baylis *ag'st* The Travelers' Insurance Co. Writ of error. Redfield & Hill, 20 Nassau St., N. Y., att'ys for pl'ff. Issued May 16, 1877.

85 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The Travelers' Insurance Company of Hartford, Connecticut, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1877, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of New York, wherein Kate Josephine Baylis, by Robert K. Rhodes, her guardian *ad litem*, is plaintiff in error and you are defendant in error, to show cause, if any there be, why a verdict rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

Witness the Hon. Morrison R. Waite, Chief Justice United States Supreme Court, this 7th day of June, 1877.

CHAS. L. BENEDICT.

Service of a copy of the above citation is hereby admitted.
Dated New York, June 15, 1877.

THOS. C. ENNEVER, *Def't's Att'y.*

[Endorsed:] U. S. circuit court. Kate J. Baylis *ag'st* The Travellers' Insurance Co. Citation. Redfield & Hill, 20 Nassau St., N. Y., att'y for pl'ff. Issued June 7, 1877.

[Endorsed:] Transcript of record. Supreme Court of the United States. Kate Josephine Baylis, by Robert R. Rhodes, her guardian *ad litem*, plaintiff in error, *vs.* The Travellers' Insurance Company of Hartford, Connecticut, defendant in error. In action at law to the circuit court of the United States for the eastern district of New York. John J. Thomasson, attorney for plaintiff in error, 20 Nassau St., New York city, N. Y.

Endorsed on cover: E. New York C. C. U. S. No. 140. Kate J. Baylis, by her guardian *ad litem*, Robert R. Rhodes, plaintiff in error, *vs.* The Travelers' Insurance Company of Hartford, Connecticut. Filed 25th October, 1881.

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113-316

U. S. Supreme Court,

FROM THE
CIRCUIT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

KATE B. BAYLIS, by ROBERT R. RHODES, her Guardian ad litem,
Plaintiff in Error,

AGAINST

THE TRAVELERS' INSURANCE CO.
Defendant in Error.

Mr. Hill's Argument.

Statement.

I. The action was commenced in the City Court of Brooklyn, upon defendants' policy of "Accidental Insurance," so called, issued October 12, 1872, whereby it insured Wm. E. P. Baylis for the term of twelve months, and promised to pay $50 per week in case of disability, and $10,000 in case of *death* from any cause covered by the policy (fol. 4).

The defendant removed the action into the U. S. Circuit Court for the Eastern District of New York (fol. 1), where it was tried before his Honor Judge BENEDICT and a jury, October 9th, 1874, who then directed a *verdict* for the plaintiff for $10,000 subject

to the opinion of the Court. *A verdict was rendered for* $11,123.60 (fol. 50). Upon subsequent consideration he held that the plaintiff had failed to make out any cause of action and directed judgment for defendant, dismissing the complaint with $85.03 costs (fol. 51). His Honor's opinion appears at length in the record (fol. 52). The judgment was entered March 13th, 1877.

The plaintiff sued out writ of error and also gave notice of appeal (fol. 84).

II. *The policy* attests an engagement to pay the plaintiff, who was the daughter of the assured, $10,000 upon proof that Wm. E. P. Baylis (fols. 4–7) "shall " have sustained bodily injuries effected through exter- " nal, violent and accidental means, within the intent " and meaning of this contract and the conditions " hereunto annexed, and such injuries alone shall have " occasioned death within ninety days from the happen- " ing thereof; or if the assured shall sustain bodily " injuries by means as aforesaid, which shall, inde- " pendently of all other causes, immediately and wholly " disable and prevent him from the prosecution of any " and every kind of business, then, on satisfactory proo " of such injuries, he shall be indemnified against loss " of time thereby in a sum not exceeding fifty dollars " per week for such period of continuous total disabil- " ity as shall immediately follow the accident and " injuries as aforesaid; not exceeding, however, twenty- " six consecutive weeks from the happening of such " accident * * * provided, always, that this insur- " ance shall not extend to any injury of which there " shall be no external and visible sign; nor to any " death or disability which may have been caused " wholly or in part by bodily infirmities or disease ex- " isting prior or subsequent to the date of this con- " tract, or by the taking of poison, or by any surgical " operation or *medical* treatment *for disease*," &c. (fol. 4–7),

The assured died on Wednesday, November 20th, 1872 (fol. 42, 53), under circumstances substantially as follows: He had been suffering from a cold from which he had recovered (fols. 19, 23, 27). On Friday, previous to his death, he had also an attack of cholera morbus (fol. 25), *but had fully recovered from that* (fols. 19, 23, 27). On Monday evening, anticipating a restless night, he applied to Dr. Rhodes to suggest some remedy. The doctor prescribed a mild form of opium, to be taken when he went to bed—twenty drops of it (fols. 19, 20).

His daughter, the plaintiff, gives the history of the accident from which he died. The father and daughter constituted his family and they were boarding (fol. 17). He was up and down at intervals until about ten o'clock at night (fol. 40), when he came to his daughter's room to take his medicine. The doctor had previously prescribed chloral (fol. 26-7). She had given him some of that and prepared the opium which he took and soon thereafter he went to bed (fol. 40).

At about four o'clock in the morning she awoke and found her father awake. He said that he had been about the room (fol. 41). He said he had taken a large dose of the opium.—that it was worthless stuff and that, if he had taken the entire contents of the bottle, it wouldn't have done him much good (fol. 41). He said that he had not slept yet. Soon he fell into a heavy sleep—so heavy that she was somewhat alarmed (*Id*).

About six o'clock in the morning one of the boarders (Mr. Ostrander) called and quieted her fears (*Id*).

About eleven o'clock (Tuesday—fol. 20), Dr. Rhodes called and found him indicating every evidence of narcotic poisoning (fol. 23, 31). He had evidently taken an over dose of *one* of the medicines—probably the opium—(fol. 23, 45). Everything was done to save him. But it was too late. He lingered until Wednesday and then died (fol. 42).

III. We invite special attention to the following facts:

1. If this medicine had been taken according to directions it would have been quite harmless (fol. 22).

2. There was no question of suicide in the case (fol. 49). His Honor expressly refutes any such hypothesis (fol. 57).

3. The assured had been a drug clerk and proprietor in drug business for several years (fols. 16, 17, 24), and was, presumably familiar with the effects of both chloral and opium upon the human system (fols. 24, 40), so far as they were known.

POINTS.

I.

The first question relates to the assumption by his Honor that the facts were undisputed so that nothing but a question of law remained. *We deny this proposition* and insist that while the facts themselves, so far as stated by the witnesses, were not disputed, *the jury might have drawn and presumably did draw inferences from those facts that death resulted from causes within and not excepted by the policy.*

(*a*) There was a verdict for plaintiff. No matter whether upon direction of the Court or not. The *defendant* cannot *now* be heard to allege error. (*See post.*)

(*b*) But if we treat the case as though his Honor had granted defendant's motion to dismiss the complaint, (fol. 49), his opinion erroneously assumes that the jury could not reasonably have taken any view of the

facts which would have justified a finding in plaintiff's favor. We allege that this was error, because

1. It was a question *of fact* whether or not this death was the result of an accident.

2. It was a question *of fact* whether or not this death resulted from a *mistake* as to *the kind* of medicine which he *intended* to take, *i. e.*, the chloral or opium.

(1) Deceased might have failed in the dim light to distinguish between the bottles—and so have taken chloral when he intended simply to take another dose of opium. Precisely what effect such an alternation of those drugs might have produced was clearly a question of fact (fol. 36).

(2) Possibly the deceased arose, and in a semi-unconscious state, resulting from the first dose, *mistook his medicine. His voice and conduct were certainly peculiar* (fol. 21).

3. It was a question of fact, whether or not the deceased, by mistake or accident, took *more* than he intended to take. Perhaps he miscounted the drops, or, in his nervous or half-unconscious state, by inadvertance, spilled out more than he intended. It is altogether probable that this was the real cause of his taking the excess of either medicine.

4. So, too, it was a question of fact, whether or not he *mistook the power of the medicine*, or his *own strength to resist its effects.*

5. So, also, it was a question of fact, whether or not the death resulted from external, violent and accidental means, within the meaning of this policy.

6. So, also, it was a question of fact, whether or not, the death resulted from *any* of the excepted clauses in the policy. His Honor has assumed to find that his death resulted from *medical treatment for disease.* That was a question for the jury.

(*c*) If not already obvious upon their mere statement, I hope, by subsequent suggestions, to throw more light upon these propositions.

II.

We need give ourselves no trouble in searching for evidence of some "external and visible sign" of this injury. That phrase in the policy relates wholly to the injuries which do not terminate in death. This was held of a policy which, *in this respect*, was substantialty like this one.

Mallory vs. Travellers Ins. Co., 47 N. Y., 52, 56.

But, if such sign is required, it clearly appeared. Dr. Rhodes could, and did, determine the cause of death from signs which were both *external* and *visible* (fol. 23, 29, 31-2).

III.

Nor can it be assumed that this death resulted from "the taking of poison," or from "self-inflicted injuries," because—

(*a*) These phrases apply wholly to intentional acts.

Van Zandt vs. Mutual Life Ins. Co., 55 N. Y., 169.
Breasted vs. Farmers' Loan & Trust Co., 4 Seld., 299.
Hartman vs. Keystone Ins. Co., 21 Penn. St., 466.
The Eq. L. As. Society vs. Patterson, 5 Am. Rep., 535.

Fowler vs. Mutual Life Ins. Co., 4 Lansing, 202,
Terry vs. Life Ins. Co., 1 Dill, 403.
Horn vs. Angelo, &c., Co., 7 Jur., N. S., 673.
Same, 30 L. J., Chan., 511.
St. Louis Mut. Ins. Co. vs. Groves, 6 Bush., 268.
Dufaur vs. Providence Life Ins. Co., 25 Beav., 599.
See also 9 W. R., 359, H. L. J., N. S., 142.

And it certainly was a question of fact, whether or not this difficulty arose from an *accident.*

(*b*) Indeed, the bill of exceptions refutes the theory of intentional self-destruction, by assuming that the taking of the overdose *was not intended* by the assured to produce death (fol. 49).

(*c*) *And again:* This distinction is plain from the very terms of the policy. "*Suicide,*" (felonious or otherwise, "*sane* or *insane*"), is *excepted* (fol. 6), thus indicating that "self-inflicted injuries" are *not* qualified by the words "sane or insane." The latter are left subject to the general rule, that the act must have been rational and with "injury" as the object in view. The very reverse was the plain object in this case, *i. e.*, the avoidance of all danger.

IV.

We insist that his Honor is in error in asserting that death resulted from "*medical treatment* for *disease,*" and that, in the very worst view of the case, this was a question of fact for the jury.

(*a*) In the first place *there was no disease.* Deceased had recovered from his *disease* (fol. 23). This as-

sumption is, therefore, full in the face of the undisputed testimony.

1. Dr. Rhodes swears positively that *he had no disease;* that his nervousness was *a mere paning disturbance of the nerves* (fols. 23, 28), and was not a disease; that it was a mere symptom of the past disease (fols. 24, 28), which had wholly terminated (fol. 28).

2. Dr. Rhodes' opinion, in this respect, stands approved by the highest legal authorities.

Cushman vs. U. S. Life Ins. Co., 70 N. Y., 72, citing many cases at p. 77.

3. The same authority holds that this was a matter of fact for the jury. (*Id.* p. 77.)

4. OBSERVE *that this phrase forms no part of any warranty, and, therefore, falls within the general rule that "all exceptions in policies are construed most "strongly against the insurer."* (*Post.*)

5. The word "disease" as used in this phrase, stands related to the previous use of the *same word* in the *same sentence.* It excludes cases of death from "*disease*" or "medical treatment" for *such* "*disease.*"

(*b*) In the next place deceased was not under "*medical treatment.*" He was not under "*treatment*" at all.

1. This word signifies active manipulation or control by the person who administers the treatment. Webster defines it thus:

"1. The *manner* in which a *subject* is treated; management; "manipulation; manner of mixing or combining or decompos- "ing and the like, as the treatment of substances in chemical "experiments. 2. Manner of using; behavior towards a per- "son whether good or bad; usage. 3. *Manner* of applying "remedies to cure; mode or course pursued to check or de- "stroy, as the treatment of a disease. 4. *Manner* of applying "remedies to, as the treatment of a patient. 5. The act of "treating or entertaining; entertainment; treat."

2. The phrase "*medical* treatment" is used in this policy as the companion for "surgical operation"—the latter signifying an *operation* upon the *body* by one who is distinctively and professionally a *surgeon* and the former by a *physician*. There must be the relation of *physician* and *patient*. There was nothing of the kind here. All that had ceased. There was only the casual inquiry from this physician—his personal friend—indeed his most intimate friend (fols. 17–8,)

3. Consider also the phrases "medical evidence," "medical jurisprudence," "medical authors," &c., as illustrations.

4. See also *Cushman vs. U. S. Life Ins. Co.*, and cases cited.

(*c*) Again, if we assume that this phrase includes the acts of the nurse or attendant under the physician's orders, the case is not within the meaning of this policy.

1. The dose which Dr. Rhodes recommended, twenty drops, was quite harmless (fol. 22). Hence, in any view, deceased had passed wholly beyond the physician's directions. His act was quite as much beyond the *physician's responsibility*, as if he had thrown away both the chloral and opium and taken arsenic or prussic acid, or even tumbled down stairs in his effort to get something, or to reach same place, which seemed necessary, on his own judgment.

2. One might as well say that he was acting under *legal advice* in giving a mortgage when the lawyer had advised a promissory note.

(*d*) Dr. Rhodes testified that this was not medical treatment (fol. 23).

(*e*) The idea of this phrase is that *this company would take the risk of all that men generally do for them-*

selves; but would not insure against the acts of *surgeons* and *physicians* in cases where *they* had assumed *professional responsibility* for the patient. Since death from "disease" is excluded the distinctions between death from that cause and those resulting from medical treatment *for* disease are so fine, and the risks and dangers in this respect are so great, that they exclude even *accidents* in the latter class of cases.

(*f*) We insist that all this was for the jury, and that his Honor's assumption is in face of the evidence.

V.

We thus reach the main question: Did this gentleman sustain "*bodily injuries* effected through *external, violent* and *accidental means* within the meaning of this contract" (fol. 4).

(*a*) *All these phrases are to be construed strictly against this defendant.*

Burkhard vs. Traveller's Ins. Co., 102 Penna. St. (6 But.), 262.
Palmer vs. Warren In. Co., 1 Story, 360.
Yeaton vs. Fry, 5 Cranch 335.
Welts vs. Conn. Mut. L. I. Co., 48 N. Y., 34, 39.
McMaster vs. The Prest., &c., 55 N. Y., 222.
See also 2 Atty. Law Journal, 217, and 8 Id. 85.

Especially are all exceptions in policies to be taken strongly against the insurer.

1 Duer on Insurance.
Breasted vs. Farmers' Loan and T. Co., 8 N. Y. 305.
Hoffman vs. Ætna Ins. Co., 29 N. Y. 405.
Rolker vs. Gt. Western Ins. Co., 3 Keyes, 17.

Any ambiguity should defeat the company.

Smith vs. The Accident Ins. Co., Ex. 22, L. T. 861.

When we consider that the language of these policies is the result of extraordinary skill, of the combined ingenuity and learning, fortified by long experience, it is apparent that the average applicant for insurance is greatly overmatched; and the reasonableness of these rules of construction is obvious.

(*b*) The strongest possible argument against defendant appears from the fact that *this policy assumes that death from "medical treatment for disease" is within the general meaning of the phrase,* "bodily injuries "effected through external, violent and accidental "means," upon the principle *noscitur a sociis.*

Morse vs. Buffalo F. and M. Ins. Co., 11 Am. Rep. 587, 30 Wis. 534.

1. *Observe,* that we are not to construe *this phrase* upon our notion of the ordinary meaning of the words, but with reference to "the meaning and "intent of this contract" (fol. 4), *i. e.*, as indicated by "the provisions, conditions, *limitations* and *exceptions* herein contained" (fol. 5), as reflecting the meaning or sense in which this language was used.

2. *If death from this cause was* NOT *within this general phrase, why this exception? What need of excepting a cause of death which never was included?*

(*c*) But, passing this point, this general phrase plainly includes this cause of death as a "bodily injury," *i. e.*, narcotic poisoning. What is the difference between some injurious irritant in a man's stomach or in his eye? The injury is the same in either case.

It simply operates on a different member of the body.

(*d*) The *means* were "*external*," although they operated *internally*. The opium, or chloral, was an unnatural and, in that sense, foreign substance introduced into the body, just as much as water in cases of drowning (2 Alby. L. J., 217; Trew vs. R. Pas. As. Co., 5 H. & N., 211; 6 *Id.*, 839; 7 Am. Rep., 414; 8 *Id.*, 218; Reynolds vs. Ac. Ins. Co., 18 W. R., 1141; 22 L. J. N. S., 820), or gas in cases of suffocation, or ice in the tissues in cases of freezing (8 Alby. L. J., 87), or a strain from lifting (Martin vs. Trav., &c., 1 F. & F., 505).

The case of *Winspear vs. Accident Ins. Co.*, 42 L. T. (N. S.) Exch. Div., 900, is clear upon this point. This was a case of drowning—*the water in the lungs* being the "*proximate* * * * *cause* of * * * the death" (fol. 6).

(*e*) So, too, the *means* were *violent, i. e.*, they were unnatural—abnormal. It is apparent that the common and vulgar idea of force, or blows, *upon the body* was not the sole meaning of the word "violent" as here used.

1. It is significant, in respect to the meaning of both the words, "external" and "violent," that in the cases of injuries *not fatal*, the policy requires some "external and visible sign," while these conditions are not required in cases of death.

2. *Then, again, the fact that the policy excepts the case of "taking poison" clearly indicates that but for this exception, these general words would include such an act as the "proximate cause." Why otherwise should they have been excepted?* (*supra*).

3. The ordinary meaning of the term "violent," as given by lexicographers, is quite consistent with this view (see Webster).

4. So, too, in all criminal cases the act of *administering drugs* justifies the allegation of an assault and battery, and is within the phrase "force and arms" (see 19 Am. Rep., 350-2).

(*f*) It is equally clear that the "*means*" of this death were "*accidental*." The "*means*" of this death were not the *taking* of the medicine, but the *unexpected effect which resulted* in injury to Baylis' system from the act of taking.

1. *Webster* defines an accident thus: "An event which takes "place without ones foresight or expectation; an event which "proceeds from an unknown cause, *or is an unusual* EFFECT *of* "*a known cause, and is therefore unexpected;* chance; casualty."

Bouvier (Law Dict., 1, p. 51) says it is "an event which, "under the circumstances, is unusual and unexpected by the "person to whom it happened. The happening of an event "without the concurrence of the will of the person by whose "agency it was caused or the happening of an event without "any human agency."

2. The courts have adopted substantially the same definitions in this class of cases.

MERCUR, Ch. J.—In Burkhard vs. Trav. Ins. Co., 102 Penna. St., 268, qnotes and adopts these definitions.

WITHES, J.—In *Ripley vs. R. Pass. As. Co.* (U. S. C. C., Mich., 1870, 2 Big. Cases, 738) says that it is "any event which "takes place without foresight or expectation of the person "acted upon or affected by the event."

See also Prov. L. Ins. Co. vs. Martin, 32 Md., 310.

WILLIAMS, J.—In *N. A. Ins. Co. vs. Burroughs* (69 Penna, 43, 49; 28 Leg. Int., 69) says it is "an unusual and unexpected "*result* attending the performance of an usual and necessary "act. * * * Any unexpected event which happens as by "chance, or which does not take place according to the usual "course of things."

GROVER, J.—In *Mallory vs. Trav. Ins. Co.* (47 N. Y., 47, 56) is to the same effect. And the *decision* is plainly so, if we refer to the charge of the Judge at the Circuit in that case.

See notes to same case as reported, 7 Am. Rep., 414.

See also Moak's Note, 14 English Rep., 556.

We thus see that the "unexpected *result* attending "the performance of an unusual or necessary act," the taking of medicine, is the accident. It was the *injury*

to Baylis' body *resulting* from effect of taking this medicine which was the "means" of his *death*. This effect was the "unexpected *result*" of taking the medicine. The "unexpected *action* of the medicine was the *means* of the *injury*. This was the *proximate cause*" within the meaning of this contract (fol. 6) just as much as the water in the dead man's lungs was the "*causa causans*" in

Winspear vs. Accident Ins. Co., Exch. 2 L. T. (N. S.) 900.

The case of *Trew vs. The Railway Pass. Soc.* (5 Hurl. & N., 211, reversed and held for the assured (6 *Id.*, 840) is clearly in point. The policy there related to "an injury *caused* by *accident*." Can it be argued that there would have been a different result if the words had been "from an accidental *cause?*" And is there any difference between the phrases "accidental *cause*" and "accidental *means?*"

The case of *Martin vs. Travellers Ins. Co.* (1 Foster & Finlason, 505) would seem to be decisive. The assured attempted to lift a heavy burden, and *severely strained the muscles of his back*. It was *the intentional* act of lifting which *produced* an *unexpected result* upon his muscles. So here, *perhaps*, Baylis intended to take this medicine, which produced an *unexpected result, i.e.*, poisoning and *killing him*, instead of allaying his nervousness and saving him. It was held for the jury to determine if the *result* of that *cause, i.e., the strain* was an accident. *Some* strain was intended but not this *extraordinary* strain which resulted from the miscalculation. The *strain* upon the *muscles* was the *means*, or *cause*, of the injury. So, in Baylis' case the *strain* upon his *vital functions* produced his *injury* which *unexpectedly resulted* in death. Each may have intended the remote or primary act, but not the *injurious*

strain, which was the "proximate cause" of death (fol. 6).

So, also, an engineer may *intend* to drive his train over a bridge which he has crossed a thousand times before. But, crossing the last time, he mistakes either the strength of the timbers or the weight of his train, and the bridge falls resulting in *his* death. It is an accident. Is not his death the result of accidental *means* or *causes;*—the *injury* to and breaking of the bridge, and the falling thereof as a *result* of the *injury?*

So if a man jumps to catch a departing ferry boat, and, either by miscalculating the distance or misjudging his own strength, he falls into the water; Or if he jumps from a wagon and the concussion ruptures a blood vessel in his brain and he dies from compression.

Again we fall back upon the results of "taking poison" (fol. 6), which are within this *exception* or *limitation*, as the most perfect illustration of the *nature* of the *injuries* which, but for this exception, would be regarded as covered by the term "accidental means."

From time to time this defendant has been instructed by Courts that all these cases of "over-exertion," either in "lifting" or "wrestling," were accidents, and were classed as among the results of "accidental means" or causes; *and they, therefore, except these cases.*

The truth is that this phrase is a mere play upon words—striving to "hit it, if it is a deer, and miss it if it is a calf"—on the question of proximate and remote cause. If they stand for proximate cause—*i. e., immediate cause*—it is clear that it was the unexpected strain of the medicine which produced and, therefore, was the means of this, injury. Its *expected* effect would have been a *benefit.*

VI.

We think the case of *Burkhard vs. Trav. Ins. Co.* (102 Penna. St., 262) almost decisive.

VII.

We submit that the opinion of Judge SHIPMAN in *Southard vs. Railway Ins. Co.* (Biglow's cases) cannot be sustained in view of the foregoing cases and considerations unless, perhaps, upon the theory that it is the reasoning of *a juror upon a question of fact* rather than *a judge upon a question of law*, for he was sitting as an arbitrator and not as a Court.

VIII.

The Court ought to have ordered judgment for the plaintiff on this verdict, in pursuance of plaintiff's request, and that this Court ought now to do that which the Circuit ought to have done—to order judgment for plaintiff. If we are wrong in this view we ask for a new trial. We respectfully submit that there was no power to grant a new trial, and hence that judgment for the plaintiff was the only logical result of the existing situation.

(*a*) The defendant, after the evidence was all in, asked the Court to dispose of the case on questions of law.

(*b*) It thereby waived its right to go to the jury.

(*c*) The direction was, therefore, proper, since the only question raised *by defendant* was whether or

not the case, as put by any view of the evidence, fell within any possible construction of the policy.

(*d*) Of course, plaintiff waived nothing.

Finally.

We close as we began, by insisting that *all these matters were for the jury*, within the rules indicated by the foregoing cases. No *Judge* could say just what led to the taking of this excess of opium. No *Judge* could say that he did not take chloral, with all its uncertain results (fol.). No *Judge* could say that he took one or the other, or that he took either *by design*, for perhaps he was in a bewildered state, and incapable of designing anything. No *Judge* could say that he did not misjudge the strength of the medicine or his own strength to resist its effects (if he *judged* at all), and so overtaxed his powers, as the *means* of this *injury* to his vital functions which caused his death. And it is certain that there was no "*disease*" for which he was under "medical treatment." So, too, it would seem clear that the excess of whatever he took was quite beyond the limit of "medical treatment" for anything.

John L. Hill
for Plff in Error

113-316

BRIEF FOR DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 140.

KATE I. BAYLIS, BY HER GUARDIAN *ad litem*, ROBERT R. RHODES,
Plaintiff in Error,

vs.

THE TRAVELERS INSURANCE COMPANY, OF HARTFORD, CONNECTICUT,
Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of New York.

F. E. MATHER,
Counsel for Defendant in Error.

Supreme Court of the United States.

KATE J. BAYLIS, BY HER GUARDIAN *ad litem*, Robert R. Rhodes,
Plaintiff in Error,

vs.

THE TRAVELERS' INSURANCE COMPANY, of Hartford, Connecticut,
Defendant in Error.

Statement of Facts.

This action is brought by plaintiff in error, to recover $10,000 and interest from defendant in error, because of the death of William E. P. Baylis, the father of plaintiff (Complaint, page 17, folios 60 to 62).

The action is based upon a policy of insurance made by defendant, and on certain terms, provisions and conditions, insuring said deceased against death occasioned alone by bodily injuries effected through external, violent and accidental means within the intent and meaning of said policy, and the conditions thereunto annexed (Policy, page 1, folios 3 to 15).

The defense is that the death of said Baylis was not occasioned by accident, or by bodily injury within the intent and meaning of said policy (Answer: page 18, folios 63 to 66).

The Court below gave judgment to defendant for costs (Judgment, page 20, folios 67 to 71).

Baylis, the insured, died about 6½ or 7 o'clock, Wednesday morning, November 20, 1872 (page 12, folio 42), aged about forty-five years (page 7, folio 24).

About thirty years before his death he was a drug clerk in Brooklyn about two years (page 5, folio 16; page 7, folio 24).

Afterwards he went into the drug business for himself in Brooklyn, and was in it about ten or twelve years (pages 5, folio 16; page 7, folio 24).

He next went into a country drug store, and continued there till he returned to Brooklyn, about five or six years before his death, which occurred in November, 1872 (page 5, folio 16, 17).

Thus he had been familiar with drugs and medicines for about thirty years, less about five or six years, and understood the nature and qualities thereof (page 11, folio 40; page 12, folio 43).

Dr. Rhodes (who prosecutes this suit), knew said Baylis for about thirty years, first, as a drug clerk, and thence down to his decease (page 5, folios 16 to 18).

The doctor attended said Baylis during his last illness (page 5, folio 18), and saw him every day till his death (page 7, folio 25).

He was first called to see said Baylis about a week or ten days before his death (page 7, folio 24), and found him suffering from influenza, and prescribed for him (page 6, folio 19; page 7, folios 25, 26).

Baylis got better, and continued to improve until attacked by cholera morbus, that was about the Friday before his death, when he had three convulsions. The

cholera morbus seemed to completely shatter his nervous system, left him in a wholly nervous state (page 6, folio 19 ; page 7, folio 25).

On that Friday the doctor prescribed chloral in twenty grain doses, to be repeated in case it had no effect (page 8, folio 26 ; page 9, folio 32), to be repeated each hour (page 8, folio 27).

The chloral was taken at bed time, thereafter, daily, up to, and including the next Monday, and the 20 drops of opium were additional thereto (page 10, folios 36, 37 ; page 11, folio 39).

On visiting Baylis Monday morning, the doctor found him improved. Baylis then proposed going to New York the next day. The doctor told him it was imprudent to go, and suggested that he stop at the doctor's office on the way (page 6, folios 19, 20).

He did so because Baylis' nervous system was so disordered (page 8, folio 27).

At that visit, Baylis, on account of restlessness, requested an opiate for a quiet night's sleep (page 6, folio 19), and thereupon the doctor procured for him Squibbs, liquor of opium (page 6, folio 22), a preparation of opium of equal strength to laudanum, and ordered Baylis to take 20 drops of it on going to bed (page 6, folio 20; page 8, folio 27).

Baylis was still taking the chloral at bed time, and the doctor's further order was, that he take the 20 drops of liquor of opium in addition to and with the chloral (page 10, folios 36, 37; page 11, folio 39).

On that Monday night, about half-past 9 o'clock, Baylis, because of his trembling, was assisted by his said daughter Kate in taking the chloral, but declined her assistance in taking the opium, and told her that he had handled medicines long enough to be careful. He then took both

the chloral and opium and went to bed (page 11, folios 39, 40).

On the next (Tuesday) morning, at about 4 o'clock, Baylis was in bed, but awake. He then said he had not been asleep. He also said he had been up and had taken a large dose of opium, and that it was worthless stuff, and if he took a whole bottle of it, it would not do him much good (page 12, folios 40, 41).

Previous to this, for a long time, Baylis had not been been able to sleep. Before half past 5 or 6 o'clock A.M., he began to breathe very heavily. He never awoke or became conscious thereafter (page 12, fol. 41).

He died on the next Wednesday morning, about 6½ or 7 o'clock (page 12, fol. 42).

So far as is shown, no remedial measure was resorted to or effort made by the doctor or others to remove or counteract the effects of chloral or opium, or otherwise to save Baylis' life, and no post-morten examination was made.

BRIEF.

First.—The policy in this action is not a general or ordinary Life Insurance Policy. The subject matter of such a policy is death, an event certain to occur. The risk is on the uncertainty of the time when it will occur.

Second.—The subject matter of the policy in this action is bodily injuries effected through external violent and accidental means. This is a combination of four concurring circumstances which are not certain or likely

to occur. The risk is on their so concurring and causing death.

Third.—This policy is still further qualified and restricted by express "provisions, conditions, limitations and exceptions," whereby the insured, though he "shall have sustained bodily injuries effected through external, violent and accidental means," has no cause for action against the insurer. Among those "provisions," &c., are the following, viz. (page 2, folio 6):

1. No claim shall be made by the insured in respect "to death or disability which may have been caused wholly or in part by bodily infirmities or disease."

2. Or by "medical treatment for disease."

3. Or, "by the taking of poison."

4. Or by "self-inflicted injuries."

5. Or by "exposure to any obvious or unnecessary danger, hazard or peril."

6. Or when the insured has not used "all due diligence for personal safety and protection" (page 3, folio 9).

POINTS.

Fourth.—By the express terms of said policy, there can be no cause of action, unless (page 1, folio 4; page 2, folios 4, 6).

1. "External, violent and accidental means," all concurrently have effected a bodily injury. Such "means"

must have been the first and sole cause, and such injury must have been the first effect.

2. Such injury, in its turn, must have been "the proximate and sole cause of the disability or death."

Fifth.—When the bodily injury is not "effected through external, violent, and accidental means, within the intent and meaning of said policy and the conditions thereunto annexed," the effect of the injury is wholly immaterial. The insured has no cause of action.

Sixth.—The law presumes that Baylis' death was effected by the natural and common cause, viz., disease. The burden of proving the contrary, and that he received a bodily injury "effected through external violence and accidental means," within the intent and meaning of said policy and the conditions annexed, and that such injuries were "the proximate and sole cause" of his death, rested with plaintiff. Plaintiff did not so prove.

Seventh.—Defendant claims that Baylis' death was effected by and through the usual and natural cause, viz., disease.

1. The testimony, properly considered and compared, fails to prove that Baylis did not so die.

2. There is no proof that Baylis did in fact take an overdose of opium, or that he took any quantity of opium (page 12, folios 40, 41, 43, page 8, folio 28).

3. From the testimony, if Baylis took opium, he did so

prior to 4 o'clock on Tuesday morning (page 13, folio 44), and died about half past 6 or 7 o'clock the following Wednesday morning (page 12, folio 42), having lived more than twenty-six hours.

4. It is a well established physical law that the ordinary duration of life in a case of fatal opium poisoning is from seven to twelve hours only. The extreme limit is marked by one solitary case, in which the person died in twenty-four hours (Beck's Medical Jurisprudence, 12th edition, vol 2, page 784).

This shows that Baylis did not die from opium poisoning.

Eighth.—If for any reason defendant's claim next above is not deemed tenable, then it is further claimed that Baylis did not "sustain bodily injuries effected through external, violent and accidental means within the intent and meaning of said policy, and the conditions thereunto annexed."

1. The stipulated qualities, viz., "external, violent and accidental," pertain solely and exclusively to, and must be found in the "means" the first cause. A "bodily injury," even though it cause death, is not within the policy, unless the injury was effected through "external, violent and accidental means all concurring."

2. If, as plaintiff claims, "opium in overdose" caused Baylis's death, then he must have sustained bodily injuries effected through swallowing opium. In such case the "means" must have been the opium (the instrument used), and his own act in swallowing it.

3. The "means" were not "violent." There was no force or constraint in or pertaining to those "means."

They were spontaneous, voluntary and natural without force or constraint.

4. Those "means" were not "accidental." Baylis took the opium deliberately of his own free will and choice and for a purpose.

The opium had been prescribed and procured for him by his physician "on account of his restlessness," and "for a quiet night's sleep" (page 6, folios 19–20–22), and to be taken that night at bed time with the chloral (page 10, folios 36–37.

Baylis intended to and did take the opium without the intervention of any "accident," casualty or chance.

Ninth.—By express provisions the policy does not extend to any bodily injury, "of which there shall be no external and visible sign" (page 2, folio 6), even though the injury is effected through such means as aforesaid. There was no such sign in this case. The injury, if any, was internal and invisible.

If it be claimed that Baylis's symptoms were such signs, then defendant says :

1. That they were not such within the intent and meaning of said policy.

2. If Baylis had taken opium, as plaintiff claims, it is proved by Baylis's physician that "opium tends to produce such a condition of the brain as to induce cereous or sanguineous apoplexy" (page 9, folio 31), and that "there was nothing different in the symptoms from what there would have been in an apoplectic case" (page 8, folio 20). Hence the symptoms were presumptively signs of apoplexy, a natural disease, and not of opium poisoning. Defendant is not liable.

Tenth.—By express provision, the policy does "not extend to any death, caused wholly or in part, by the taking of poison" (page 2, folio 6).

1. It is proved by Baylis's physician that both the chloral and opium prescribed for Baylis, are "narcotic poisons" (page 10, folio 36), and that the chloral, which Baylis took that Monday night as prescribed, "is more dangerous than opium, because its effects are uncertain." "One person will take a dose with a certain effect, another person taking that same dose will die from the effects of it" (page 10, folio 36).

2. If Baylis's death was caused by taking chloral or opium, then his death was caused "wholly or in part by the taking of poison," and the defendant is not liable.

Southard *vs.* U. S. Mutual Accident Association, 102 Penna. State Reports, (6 Outerbridge) 230.

Eleventh.—By express provision the policy does not extend "to any death caused wholly or in part by bodily infirmities or disease, or by medical treatment for disease" (page 2, folio 6).

1. At the time of Baylis's death and for about ten days next before, he had been and was suffering from "bodily infirmities and disease," and "was under medical treatment for disease" (page 7, folio 24 to 27; page 5, folio 18 to 20). He first had influenza and next cholera morbus and convulsions, which seemed to completely shatter his nervous system and left him in a wholly nervous state (page 6, folios 18–19), his nervous system was disordered (page 8, folio 27), he was restless and in need of sleep (page 6, folio 19).

2. By direction of his physician he was daily taking chloral in doses to be repeated every hour, until it had effect (page 8, folios 26–27), which is a narcotic poison, and uncertain in its effects, and particularly dangerous (page 10, folio 36).

3. On Monday, November 18, he was directed, on account of restlessness and need of sleep to take opium, in

addition to and with the chloral (page 10, folio 37; page 11, folio 39).

4. Opium is a narcotic poison (page 10, folio 36).

5. For a long time before that Monday night Baylis "had not been able to sleep" (page 12, folio 41), and because of his trembling, his daughter assisted him in taking the chloral, but not the opium, he saying, "he had handled medicine long enough to be careful." He may then have taken the opium also, but it is not clear that he did (page 11, folio 40, page 8, folio 28, page 12, folios 40–43).

6. Baylis had been a druggist for at least 24 years (page 5, folio 16–17; page 7, folio 24).

7. It is thus shown that Baylis was bodily infirm and diseased, and was under Doctor Rhodes's "medical treatment for disease," that he was directed to take both chloral and opium, as remedies or relief from disease, that in taking chloral and opium, if he took both, he took only the medicines so prescribed, and took them as "medical treatment for disease."

8. Hence his death must have been "caused wholly or in part by bodily infirmities or disease," or "wholly or in part by medical treatment for disease," and in either case defendant is not liable.

Twelfth.—If it be claimed that the taking the medicines so prescribed was not used as directed, and therefore was not medical treatment, defendant claims

1. There is no proof that either the chloral or opium was not used as directed, or that Baylis took an overdose of either; the only testimony on that point is as to a declaration by Baylis, that he had "taken a large dose of opium, and that it was worthless stuff, and if he took a whole

bottle of it, it would not do him much good" (page 12, fols. 40, 41), and the opinion of Dr. Rhodes, based on symptoms.

2. The worthlessness of the Doctor's opinion is clear from his testimony that "there was nothing different in the symptoms from what there would have been in an apoplectic case" (page 8, fol. 29).

3. The opium was prescribed to him to secure sleep, and he took it, if at all, for that purpose, which was "medical treatment for disease," whether he did or did not use the quantity prescribed.

Thirteenth.—Both the chloral and opium being poissons, (page 10, fol. 36), if Baylis took either, not as "medical treatment for diseases," he must have taken such to destroy life, of his own free will.

In such case defendant is not liable.

Southard *vs.* U. S. Mutual Accident Association, 102 Penna. State Reports, (6 Outer bridge) 230.

Fourteenth.—By express provision the policy does not extend "to any case, except where the bodily injury is effected through external, violent and accidental means," and "is the proximate and sole cause of the death" (page 1, fol. 4; page 2, fol. 6).

In other words, if Baylis' death was caused in any degree by his infirmities or disease, the defendant is not liable.

1. The proofs show that Baylis was infirm and diseased, and therefor was attended by a physician who directed him to take both chloral and opium, both poisons; that "opium tends to produce such a condition of the brain as

to induce apoplexy," (page 9, fol. 31), and that in his case "there was nothing different in the symptoms from what there would have been in an apoplectic case" (page 8, fol. 29).

2. In the absence of proof to the contrary, which belonged to plaintiff to produce, if it existed, the law presumes that "the proximate and sole cause of the death" was disease, the usual and natural cause.

The defendant is not liable.

Fifteenth.—By express provision "no claim should be made under this policy, when the death may have been caused by self-inflicted injuries" (page 2, folio 6).

1. If opium in any way or degree contributed to Baylis death, his death must have been caused by "bodily injury," effected through his taking the opium.

2. Opium was prescribed to and procured for him at his request.

3. From more than 24 years' familiarity, as a druggist, with opium, he knew its qualities and effects, and used it to secure those effects for his bodily relief, and took it of his own free will.

4. It is immaterial whether the injury was intended or he erred in judgment; in either case it "was self-inflicted."

Defendant is not liable.

Sixteenth.—By express provision "no claim shall be made under this policy when the death may have happened in consequence of exposure to any obvious or unnecessary danger, hazard or perilous adventure" (page 2, folio 6).

1. If Baylis died from having voluntarily taken opium in overdose, and not as directed, he exposed himself to the usual and natural effects of such poison, which effects, from his 24 years' experience as a druggist must have been an "obvious or unnecessary danger, hazzard or perilous adventure."

Defendant is not liable.

Seventeenth.—By the policy "the party insured is required to use all due diligence for personal safety and protection (page 3, fol. 9).

1. If Baylis' death was in any way or degree caused by his taking opium, disregarding the direction of his physician, whether he did or did not take an overdose of the poison, he did not use such diligence, but did violate that express condition of the policy.

Defendant is not liable.

Eighteenth.—Plaintiff has no cause of action in any case, unless it be proved, among other things, that Baylis' death was caused solely and alone by bodily injuries effected by external, violent and accidental means, within the intent and meaning of the policy, and the con ditions thereunto annexed (page 1, folio 4).

1. No bodily injury so effected is proved, nor is any violent or accidental means proved.

2. Though "violence" and "accident" are the essence of the policy, neither has been proved within the intent and meaning of the policy, &c.

Defendant is not liable.

Southard *vs.* The Railway Passengers' Assurance Co., 34 Conn., ~~N~~, 574.

R.

Nineteenth.—In case any one of the foregoing points is well taken.

Defendant is not liable.

The judgment below should be affirmed, with costs.

F. E. MATHER,
Counsel for Deft. in Error.